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In re Application of : DECISION ON PETITION
BOSSARD, et al. :
Serial No.: 10/560,191 :
PCT No.: PCT/GB04/01683 : UNDER 37 CFR 1.47(a)
Int. Filing Date: 19 April 2004 :
Priority Date: 06 June 2003 :
Atty Docket No.: 15261.0003USWO :
For: DEVICE AND METHOD FOR REMOVING :
A COMPOSITION FROM THE SKIN :
:

This decision is in response to the applicant's petition under 37 C.F.R. § 1.47(a) filed 03 April 2006 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 19 April 2004, applicant filed international application PCT/GB04/01683 which claimed priority to an earlier application filed 06 June 2003. A copy of the International Application was forwarded to the United States Patent and Trademark Office (USPTO) from the International Bureau (IB) on 16 December 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 06 December 2005.

On 05 December 2005, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by the requisite basic national fee and a First preliminary amendment.

On 08 March 2006, applicant was mailed a "Notification of Missing Requirements" (Form PCT/DO/EO/905) informing applicant that an executed oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required. Applicant was afforded two months to file the required response.

On 03 April 2006, applicant filed the present petition under 37 CFR 1.47(a) to accept the filed declaration without the signature of joint inventor Andrew Robert McLeish. Applicant is advised that pursuant to 37 CFR 1.17(g), the petition fee is \$200.00. As authorized, the fee will be charged to deposit account 13-2725.

DISCUSSION

Applicant is advised that 37 CFR 1.47 applies only where a **known** legal representative of a deceased inventor cannot be found or reached after diligent effort, or refuses to make application. In such cases, the last known address of the legal representative must be given (see MPEP § 409.03(e)). In the present case, for the reasons detailed in the petition and supporting papers, applicant has not provided any information regarding the deceased inventor's legal representative. As such, the petition under 37 CFR 1.47 to accept the application without the legal representative is inappropriate pursuant to MPEP 409.03(c). Applicant's exhibit letter of 03 March 2005 from Mr. Paul M. Hewitt states that executors to the estate of the McLeishs should be entitled to obtain the grant in respect of the estate within "3 to 4 months." Therefore, it is reasonable to assume that the matter has been settled by now. In order to proceed under 35 U.S.C. 371, applicant must seek Mr. McLeish's current legal representative or heirs. Where there is no legal representative to the estate, any court of competent jurisdiction should appoint the legal representative for the sole purpose of prosecuting the application.

In a similar vein, the filed declaration does not comply with 37 CFR 1.497(a)-(b) in that no information has been provided on the declaration for the legal representative or heir(s). The filed declaration lists Mr. McLeish with his signature block left unsigned leaving the impression that he is refusing to execute the declaration rather than the fact that he is deceased.

37 CFR 1.42 When the Inventor is Dead, states, in part:

"In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent."

In order to proceed under 37 CFR 1.47(a), applicant is required to identify the non-signing party, i.e. the legal representative as detailed above. 37 CFR 1.497(b) requires that the declaration identify and provide the citizenship for both the deceased inventor and the legal representative. Accordingly, the petition under 37 CFR 1.47(a) is dismissed.

CONCLUSION

For the reasons stated above, applicant's petition under 37 CFR 1.47(a) is **DISMISSED** **without prejudice**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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